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COURT OF CRIMINAL APPEALS
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In The Court of Criminal Appeals Of Texas
Austin, Texas

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COURT OF CRIMINAL APPEALS
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THE STATE OF TEXAS

Appellee-Petitioner

vs.

APRIL WILLIAMS,

Appellant-Respondent

On Petition for Discretionary Review from the
Fourth Court of Appeals, Guadalupe County
Appeal Number 04-18-00883-CR

APPELLEE'S PETITION FOR DISCRETIONARY REVIEW

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Oral Argument Requested

NAMES OF THE PARTIES

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Trial Judge:

Hon. Jessica Crawford
2nd 25th District Court
Guadalupe County, Texas

Fourth Court of Appeals Panel:

Sandee Bryan Marion, Chief Justice
Irene Rios, Justice
Liza A. Rodriguez, Justice

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United States Supreme Court Cases

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Statement Regarding Oral Argument

Oral argument is requested. The Court's current approach to the right to public trial is excessively rigid and leads to absurd results. Alternative approaches to this rigid interpretation exist in current law and argument should be granted to further explore the validity of those approaches.

Statement of the Case

Petitioner seeks discretionary review of the unpublished opinion and judgment of the Fourth Court of Appeals, attached as an appendix, which reversed respondent's conviction because it found that requiring Jerry Williams view the confidential informant's testimony via a live stream in another room constituted an improper closure of the courtroom. *Slip. Op.* 1-7. *Id*. The court then remanded the case for a new trial. *Id.*

Statement of Procedural History

On May 20, 2020, the Fourth Court of Appeals reversed respondent's conviction because it found that the trial court had violated her right to a public trial. No motion for rehearing was filed.

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Grounds for Review:

1. The judge, on an at best, partially developed record, required one spectator to view one witness's testimony contemporaneously from a neighboring room. Is this the sort of closure requiring reversal contemplated by the right to a public trial?

2. Did the Fourth Court of Appeals fail to adequately address petitioner's argument that the courtroom was not closed as required by Rule 47.1 of the Texas Rules of Appellate Procedure?

3. Does the Fourth Court of Appeals's opinion fail to provide proper guidance and risk creating confusion for other courts when it failed to make a clear distinction between full and partial courtroom closures and the standards applicable to each type of closure?

Arguments Amplifying Grounds for Review

Facts Related to Grounds for Review

Respondent was indicted for manufacture or delivery of a controlled substance penalty group one in an amount equal to or greater than four grams but less than two hundred grams. (Clerk's Record ("CR"), pg. 3. The case was tried before a jury who found her guilty. *Id.* at 53. The trial court sentenced her to twenty years confinement. *Id.* at 68. During the trial, the State asked that Jerry Williams be removed from the courtroom because the confidential informant would be very intimidated by his presence. (Reporter's Record ("RR") Vol. 3, pg. 5). The State created a live video stream using Skype, which allowed him to view the testimony live from another room. Id. at 5-7.

Respondent objected and argued that this allowed the confidential informant to testify in a consequence free environment, which gave him an advantage over other witnesses. *Id.* at 5-6. The State responded by arguing that:

Your, Honor, the only person who has a right to confrontation is April

> Williams. April Williams will be sitting at that table. We are not saying Jerry Williams cannot watch this person testify; however, the only reason he would sitting in this courtroom is to intimidate a confidential informant. I was the former drug and gang interdiction prosecutor, I have prosecuted capital murder cases where confidential informants were killed and/or intimidated during the course of their testimony and I think there's zero reason behind – behind keeping him in the courtroom. We're not violating open court if we let him watch by Skype from another courtroom.

Id. at 6-7. The trial court granted the State's request and made the following ruling:

> The Court finds that the State's interest outweighs the defendant's right of – to public scrutiny. The Court finds that exclusion of Jerry Williams from the courtroom during the testimony of the confidential informant is necessary to protect the confidential informant from intimidation that would traumatize him or render him unable to testify. This exclusion from the courtroom is temporary and only for the testimony of the confidential informant, and the Court finds that a reasonable alternative for Jerry Williams would be to watch the testimony in a live video stream feed from another room.

Id. at 7.

Ground 1: Under the Court's current interpretation of the right to a public trial all violations are considered structural error, which means that every violation results in reversal no matter how insignificant. Federal Courts have adopted the triviality exception because the consequences of calling every exclusion structural error are absurd. The Court should grant review and adopt the triviality doctrine to combat this problem and bring Texas law in line with current federal precedent.

Texas's interpretation of the public trial right is largely governed by the United States Supreme Court's interpretation of the right under Sixth Amendment. This is evident in cases such as *Lilly v. State* and *Dixon v. State* where the Court of Criminal Appeals routinely cites to United States Supreme Court cases when explaining the right. *See Dixon v. State*, 595 S.W.3d 216, 223-225 (Tex. Crim. App. 2020); *See Lilly v. State*, 365 S.W.3d 321, 328-330 (Tex. Crim. App. 2012). The Fourth Court of Appeals cited to several of those same court cases in its own opinion. *Slip Op.* 3-4. The Texas

Constitution's version of the right has been interpreted in the same way as the Sixth Amendment's version. *Woods v. State*, 383 S.W.3d 782 (Tex. App.—Houston[14th Dist.] 2012, pet. ref'd) (n.1).

Ordinarily, a violation of the public trial right is "structural error," which means that a defendant is not required to show harm. *Lilly*, 365 S.W.3d at 328. This means if a court finds that that the right was violated then reversal of the conviction is automatic. *Woods*, 383 S.W.3d at 779. In addition, it is irrelevant whether the closure was intentional or inadvertent. *Id.* A defendants' conviction will be reversed no matter trivial the violation and regardless of whether reversal does anything to support the right.

Federal courts have combated this problem by creating an exception to this rule known as the triviality standard. Not every deprivation of a right that is considered "structural" requires reversal of the conviction "'regardless how brief the deprivation or how trivial the proceedings that occurred during the period of deprivation.'" *United States v. Greene*, 431 F. Appx 191, 195 (3rd Cir. 2011)(quoting *Gibbons v. Savage*, 555 F.3d 112, 120 (2nd Cir. 2009), *cert. denied*, ___ U.S.___ 130 S. Ct. 61, 175 L.Ed.2d 233 (2009)).

Thus, not every improper partial closure implicates the Sixth Amendment concerns. *Id.* "Even a problematic courtroom closing can be 'too trivial to amount to a violation of the [Sixth] Amendment.'" *United States v. Perry*, 479 F.3d 885, 890 (D.C. Cir. 2007)(quoting *Peterson v. Williams*, 85 F.3d 39, 42 (2nd Cir. 1996)). A closing is "trivial" if it does not implicate the values served by the Sixth Amendment. *Perry*, 479 F.3d at 890.

This is not the same as harmless error analysis. *Peterson, 85* F.3d at 42. In *Peterson v. Williams*, the Second Circuit explained that:

> A triviality standard, properly understood, does not dismiss a defendant's claim on the grounds he was guilty anyway or that he did not suffer "prejudice" or "specific injury." It is, in other words, very different from a harmless error inquiry. It looks, rather, to whether the actions of the court and the effect they had on the conduct of the trial deprived the defendant – whether otherwise innocent or guilty – of the protections conferred by the Sixth Amendment.

Id.

The Second, Third, Seventh, Ninth, and the D.C. Circuits have adopted the triviality standard. *Greene*, 431 F.Appx at 195-97**;** *Perry*, 479 F.3d at 889-91; *United States v. Ivester*, 316 F.3d 955, 959-960 (9th Cir. 2003); *Braun v. Powell*, 227 F.3d 908, 918-920 (7th Cir. 2000); *Peterson*, 85 F.3d at 42-44. Additionally, nothing in the Supreme Court's decision *Presley* overturns this doctrine and it is still being applied by federal appellate courts. *United States v. Gupta*, 699 F.3d 682, 687-689 (2nd Cir. 2012)[1]; *Greene*, 431 F.Appx at 195-97; *See Presley v. Georgia*, 558 U.S. 209 (2010).

Calling all violations of the right to a public trial structural error inevitably means that even trivial violations will result in reversal no matter how small or inconsequential. The fact this rule applies to both intentional and unintentional violations means that even the smallest unintentional violations will result in reversal. This case is but one example, as Jerry Williams was able to view the testimony contemporaneous from another room. However, it is not hard to imagine that violations far more minor than this that would

[1] While *Gupta*'s trial occurred in 2008, it was decided in 2012. *Gupta*, 669 F.3d at 685. Additionally, the Court repeatedly cites to *Presley* throughout its opinion and gives no indication that it believes *Presley* had any impact on the triviality doctrine. *Id.* at 684-690.

nonetheless be reversed because of the Court's current approach.

Such reversals are needless and waste judicial resources because they result in retrials of cases under circumstances that do nothing to further the goals the right it is designed to protect. Currently, Texas law has no means to deal with this obvious problem. However, federal courts have adopted the triviality doctrine to limit the absurd results that flow from calling every violation structural.

This Court should grant review and adopt the triviality doctrine. Petitioner has not found any cases where a Texas Court has applied or refused to apply it. Thus, its applicability has not been ruled on, which means that, in effect, it is not currently recognized in Texas. Given that both the Court of Criminal Appeals and Fourth Court of Appeals rely extensively on federal case law in determining the nature of the public trial right, their interpretations of that right should be line with current federal precedent. The significant number of cases federal cases applying the triviality standard show that current federal precedent recognizes the standard. Texas's lack of recognition means that it is currently in conflict with that precedent. Granting review would give the Court the opportunity to bring Texas's interpretation of the right to public trial in line with that precedent.

Ground 2: Review should be granted because the Fourth Court of Appeals's opinion fails to address every issue raised and necessary to a final disposition as required by Rule 47.1 of the Texas Rules of Appellate Procedure. Specifically, it fails to adequately address the State's argument that requiring Jerry Williams to watch the confidential informant's testimony via a live feed should not be viewed as a closure of the courtroom.

Rule 47.1 of the Texas Rules of Appellate Procedure states that "the court of appeals must hand down a written opinion that is as brief as practicable *but that*

addresses every issue raised and necessary to final disposition of the appeal." *Tex. R. App. P. 47.1* (emphasis added). Review should be granted because the Fourth Court's opinion does not adequately address the State's argument that requiring Jerry Williams to watch the informant's testimony via a live feed from another room did not constitute a closure.

The right to a public trial guarantees that "an accused will be fairly dealt with and not unjustly condemned." *Dixon*, 595 S.W.3d at 224-25 (Tex. Crim. App. 2020)(citing *Estes v. State*, 381 U.S. 532, 538-39 (1965)). It does that by protecting defendants from abuses of judicial power, enhances the integrity of the judicial process by encouraging witnesses to come forward, discourages perjury, and assures the public that courts are following procedures and observing standards of fairness. *Woods*, 383 S.W.3d at 782. It also ensures prosecutors carry out their duty responsibly. *Waller v. Georgia*, 467 U.S. 39, 46 (1984).

Petitioner's brief to the Fourth Court of Appeals argued that the trial court's arrangement for Jerry Williams did not constitute a closure. Petitioner argued that having Jerry Williams watch the confidential informant's testimony via a live feed did not constitute a closure because he still able to view the testimony live as it occurred without frustrating the purposes behind the public trial right. (Appellee's Brief, pg. 9-11).

In its opinion, the Fourth Court of Appeals does not address this argument. It merely states that Jerry Williams was excluded from the courtroom and therefore, the courtroom was partially closed. *Slip Op.* 5. No additional analysis is provided. *Id.* The Court's opinion does not acknowledge the State's argument, let alone address its merits.

Why the trial court's arrangement constitutes a closure despite the accommodations that were made by the trial court is not addressed.

This is especially problematic because the Fourth Court of Appeal's rigid approach is likely to lead to absurd results and does so in this case. Finding a closure under these circumstances does not further any of the purposes behind the right and, thus, needlessly reverses a conviction. Because of this issue, the Fourth Court of Appeals should have addressed the State's argument. It should explain why it believed the trial court's arrangement should deemed a closure even though the general public was still allowed in the courtroom and Jerry Williams was still able to view the informant's testimony as it was given. Consequently, the Court's opinion fails to address every issue raised and necessary to the final disposition of the appeal as required by the rules of appellate procedure. *See Tex. R. App. P. 47.1.*

Petitioner also notes that this argument is very similar to triviality doctrine in that both arguments focus on the impact the exclusion had on the right itself. The only difference between petitioner's argument and the triviality standard is that the state made it in terms of whether a closure occurred instead of whether the closure constituted a violation of the Sixth Amendment. However, the basic principal is the same: minor or trivial violations should not result in reversal when reversal does not serve the goals that the right is meant to protect.

Ground 3: The Fourth Court's opinion appears to apply the standard used in partial closures but fails to make any distinction between full and partial closures or the applicable standards for each type of closure. Thus, it lacks clarity and risks confusing courts as to what the appropriate standard is and when it is to be applied. Review should be granted to provide clear guidance as to whether Texas law recognizes the distinction between full and partial closures and the applicable standards to each type of closure.

Typically, under the *Waller* standard, a court must satisfy four prongs to justify a closure: (1) an overriding interest that is likely to be prejudiced absent closure, (2) closure must be no broader than necessary to protect that interest, (3) the trial court must consider reasonable alternatives to closing the proceeding, and (4) the court must make findings adequate to support the closure. *Waller*, 467 U.S. at 48.

In *Woods v. State*, the Fourteenth Court of Appeals, relying on federal precedent[2], acknowledged that there was a difference between full and partial closures. *Woods*, 383 S.W.3d at 782. It noted that partial closures do not raise the same concerns as full closures because an audience remains to preserve the safeguards of public trials. *Id.* Thus, only a substantial basis is required for a partial closure rather than the overriding interest that is required for full closures. *Id.*

In its opinion, the Fourth Court of Appeals describes the substantial basis standard test when it sets out the requirements for closing a courtroom. *Slip. Op.* 4. However, the Fourth Court's opinion does not distinguish between full and partial closures anywhere in

[2] The *Woods* court cited to several court decisions where federal appellate courts, including the 5th Circuit, have recognized the distinction between full and partial closures. *Woods*, 383 S.W.3d at 782; *United States v. Osborne*, 68 F.3d 94, 98-99 (5th Cir. 1995); *United States v. Farmer*, 32 F.3d 369, 371 (8th Cir. 1994); *Woods v. Kuhlmann*, 977 F.2d 74, 76 (2nd Cir. 1989); *United States v. Sherlock*, 96 F.2d 1349, 1357 (9th Cir. 1989); *Neito v. Sullivan*, 879 F.2d 743, 753 (10th Cir. 1989).

its opinion. *See Slip. Op.* 1-7. It merely describes the partial closure standard when describing when a court may close a courtroom over a defendant's objection. *Id.* at 4. It never says that this is the standard for partial closures, it does not mention the overriding interest standard used in *Waller*, and never acknowledges that there is a difference between the two types of closures or that different standards apply it each. *See Id.* at 3-7. While it later states that the exclusion of Jerry Williams is a partial closure, it never says why it matters or that it mattes at all. It is not clear whether it recognizes the distinction or not. At best, it gives the appearance of acknowledging the distinction without ever doing so.

This is different from the Fourteenth Court of Appeals's approach in *Woods* and, thus, conflicts with that opinion. The Fourteenth Court of Appeals is clear about the distinction the two types of closures and the standards applicable to each. In contrast, the Fourth Court of Appeals never clearly acknowledges the distinction between full and partial closures and never says that the test it uses is the one used for partial closures. Thus, it gives the impression that it is used for all closures or it actually was intending to apply it all closures. Ultimately, this is why clarity is important. Its opinion muddies the water for future courts that choose to or must rely on its opinion. Review should be granted to (1) give guidance as whether Texas law recognizes the distinction between full and partial closure and (2) if it does recognize that distinction, the appropriate standards that apply to each type of closure.

PRAYER FOR RELIEF

Petitioner prays that this Honorable Court grant it petition for review and reverse the opinion of the Fourth Court of Appeals.

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CERTIFICATE OF SERVICE AND COMPLIANCE

This is to certify that on the 10th day of June 2020, a true and correct copy of this document was served by email to appellant's attorney John Lamerson at lamersonlawfirm@gmail.com.

Pursuant to T.R.A.P. Rule 9.4(i)(3) appellee certifies that this document (excluding those items listed in T.R.A.P. Rule 9.4(i)(1)) contains 2,804 words in Times New Roman Font Size 13. Footnotes are in Times New Roman Font Size 10.

/s/Christopher M. Eaton
Christopher M. Eaton

APPENDIX

Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-18-00883-CR

April Loreace **WILLIAMS**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 25th Judicial District Court, Guadalupe County, Texas
Trial Court No. 18-0874-CR-B
Honorable Jessica Crawford, Judge Presiding

Opinion by: Irene Rios, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Irene Rios, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: May 20, 2020

REVERSED AND REMANDED

A jury convicted appellant April Williams of the offense of delivery of a controlled substance (cocaine) between the amounts of four grams and two hundred grams, and the trial court assessed punishment at twenty years' imprisonment. On appeal, Williams raises three issues challenging her conviction. For the reasons described below, we reverse the trial court's judgment and remand the case for a new trial.

BACKGROUND

On August 4, 2016, Seguin Police Department Detective Jaime Diaz utilized a confidential informant to make a controlled buy of a "quarter ounce" of crack cocaine from April Williams. Based upon the evidence collected during that transaction, the State charged Williams with delivery of a controlled substance (cocaine) in an amount between four grams and two hundred grams. A jury found Williams guilty of the indicted offense, and Williams elected for the trial court to assess punishment. The trial court sentenced Williams to twenty years' imprisonment. This appeal followed.

RIGHT TO PUBLIC TRIAL

We first address Williams's second issue regarding the exclusion of one of Williams's family members from the courtroom during the testimony of the State's confidential informant witness.

Standard of Review

In *Cameron v. State*, the Texas Court of Criminal Appeals clarified the standard of review applicable to public-trial claims. 490 S.W.3d 57, 70 (Tex. Crim. App. 2016) (op. on reh'g). According to the court, "the question of whether a defendant's trial was closed to the public is a mixed question of law and fact that does not turn on credibility and demeanor." *Id.* "[W]hen dealing with the Sixth Amendment right to a public trial, deferring to the [trial] court's findings of fact that are supported by the record is a necessary prerequisite before [we] can resolve whether a defendant met [her] burden to show [her] trial was closed to the public based on the totality of the evidence, and then the ultimate legal question of whether a defendant's public-trial right was violated." *Id.*

Applicable Law

Under the Sixth Amendment's public trial provision, which is applicable to the states as a component of due process under the Fourteenth Amendment, an accused has the constitutional right to a public trial of his case. *Lilly v. State*, 365 S.W.3d 321, 328 (Tex. Crim. App. 2012); *see also Waller v. Georgia*, 467 U.S. 39, 41, 43-44 (1984). "[T]he purpose of the Sixth Amendment right to a public trial is to guarantee that the accused will be fairly dealt with and not unjustly condemned." *Dixon v. State*, 595 S.W.3d 216, 224-25 (Tex. Crim. App. 2020) (citing *Estes v. Texas*, 381 U.S. 532, 538-39 (1965). "It is the danger of secret trials … that the right to a public trial was meant to address." *Id*. Further, this right prevents the abuse of judicial power, discourages perjury, encourages unidentified potential witnesses to come forward, and instills in the public the perception that their courts are acting fairly. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569-71 (1980). It also ensures prosecutors carry out their duties responsibly. *Waller*, 467 U.S. at 46. "The right to a public trial is not absolute and may be outweighed by other competing rights or interests, such as interests in security, preventing disclosure of non-public information, or ensuring that a defendant receives a fair trial." *Lilly*, 365 S.W.3d at 328. However, "[t]he balance of interests must be struck with special care." *Waller*, 467 U.S. at 45.

We determine whether a defendant's right to a public trial was violated using a sequential two-step analysis. *Cameron*, 490 S.W.3d at 68-69. In the first step, "[t]o determine if a trial was closed, [we] should look to the totality of the evidence, rather than whether a spectator was actually excluded from trial." *Id*. at 68 (citing *Lilly*, 365 S.W.3d at 331). The defendant bears the initial burden of showing that her trial was closed to the public. *Id*. at 69. If the defendant fails to carry that burden, the analysis is concluded. *Id*. If the totality of the evidence shows the defendant's trial was closed to the public, then we proceed to the second step and determine whether the closure was justified. *Id*. at 68. Only if a trial is actually closed to the public is it necessary to determine

whether the closure was justified. *Id*. at 69. In the second step, we determine whether the trial court took every reasonable measure to accommodate public attendance before closing the courtroom. *Id*. at 63. (citing *Presley v. Georgia*, 558 U.S. 209, 215 (2010)). To close court proceedings over a defendant's objection, (1) the party seeking closure must advance that the closure is necessary to protect a substantial interest that is likely to be prejudiced; (2) the closure must be no broader than necessary; (3) the trial court must consider all reasonable alternatives to closing the courtroom; and (4) the trial court must make findings adequate to support the closure. *Waller*, 467 U.S. at 48; *Lilly*, 365 S.W.3d at 330-31; *see also United States v. Cervantes*, 706 F.3d 603, 611-12 (5th Cir. 2013) (requiring that the "lower court had a 'substantial reason' for partially closing a proceeding").

Discussion

Prior to the testimony of the State's confidential informant, the State requested "that the courtroom be closed to Jerry Williams in the interest of not intimidating [the] witness to testify." The prosecutor pointed out that "the fact [that the witness is] a confidential informant has been proffered to the Court." The prosecutor related to the trial court that the State had "credible and reliable information that it would be very intimidating to [the] witness for [Williams's family member] to be in the courtroom … ." Additionally, the prosecutor informed the trial court, generally, that witness intimidation had occurred in her previous position prosecuting drug and murder cases and in past cases not involving either Jerry Williams or this confidential informant. The State further informed the trial court that it "set up [live video streaming] so that [Jerry Williams] can watch it from another room." Over trial counsel's objections, the trial court granted the State's request and made the following ruling on the record:

> The Court finds that the State's interest outweighs the defendant's right of — to public scrutiny. The Court finds that exclusion of Jerry Williams from the courtroom during the testimony of the confidential informant is necessary to protect

> the confidential informant from intimidation that would traumatize him or render him unable to testify. This exclusion from the courtroom is temporary and only for the testimony of the confidential informant, and the Court finds that a reasonable alternative for Jerry Williams would be to watch the testimony in a live video stream feed from another room.

Immediately after making its findings, the trial court offered Jerry Williams the opportunity to watch the proceedings from another room, which he accepted.

Was the Courtroom Closed?

First, we must determine whether Williams met her burden of establishing that her trial was closed to the public. *Cameron*, 490 S.W.3d at 68. The record establishes that the trial court closed the courtroom to one person during the testimony of one witness. "The exclusion of even a single person from court proceedings can violate a person's Sixth Amendment right to a public trial." *Turner v. State*, 413 S.W.3d 442, 449 (Tex. App.—Fort Worth 2012, no pet.) (citing *Presley*, 558 U.S. at 212); *see also Woods v. State*, 383 S.W.3d 775, 781 (Tex. App.—Houston [14th Dist.] 2012, pet. ref'd) ("The exclusion of a specific person or group, even if only temporary, constitutes a partial closure."). Here, there is no question that the exclusion of Williams's family member partially closed Williams's trial.

Was the Closure Justified?

Having determined that Williams met her burden to establish the trial was partially closed, we turn to whether the partial closure of the courtroom was justified. Here, following the framework laid out in *Lilly*, we first examine whether the trial court satisfied the fourth requirement set out in *Waller* by making findings adequate to support the closure. *Lilly*, 365 S.W.3d at 329; *see also Waller*, 467 U.S. at 46. The trial court's findings are the linchpin of the analysis. *Lilly*, 365 S.W.3d at 329.

The trial court's findings in this case identify the reason for excluding Williams's family member from the courtroom as the protection of the confidential informant from intimidation. On

a proper factual showing, preventing the intimidation of a confidential informant may support a partial courtroom closure. *Addy v. State*, 849 S.W.2d 425, 429 (Tex. App.—Houston [1st Dist.] 1993, no pet.) (citing *Rovinsky v. McKaskle*, 722 F.2d 197, 200 (5th Cir. 1984) (stating that protecting witnesses from intimidation that would traumatize them or render them unable to testify justifies courtroom closure)). However, case law is clear that the trial court's findings must express more than a generic concern. *See Lilly*, 365 S.W.3d at 329; *Steadman*, 306 S.W.3d 499, 506 (Tex. Crim. App. 2012). Here, the trial court made no specific factual findings describing how the interest advanced by the State relates specifically to the requested exclusion. *Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501, 510 (1984) (stating that findings must be "specific enough that a reviewing court can determine whether the closure order was properly entered." (internal quotations omitted)). Thus, the record before us contains no findings that provide sufficient information to permit review. Further, even upon examining the totality of the record before us, we are unable to discern any evidence indicating a nexus between the exclusion of Williams's family member and the interest advanced by the State. *See Lilly*, 365 S.W.3d at 329 (describing the attributes of proper findings); *see e.g. Ali v. United States*, 398 F. Supp. 3d 1200, 1225 (CMCR 2019) (finding the lack of specificity in the trial court's findings prevented review); *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 705 (6th Cir. 2002) (requiring findings specific enough for review when addressing a courtroom closure relating to the First Amendment).

We do not diminish the need to protect confidential informants. However, in this case, the record lacks specific factual findings, or any other evidence, identifying how the exclusion of Williams's family member from the courtroom serves the interest advanced by the State of preventing intimidation of the confidential informant. *Lilly*, 365 S.W.3d at 329 ("Proper findings will identify the overriding interest and how that interest would be prejudiced … ."); *see e.g. Dhiab. v. Obama*, 70 F. Supp. 3d 465, 468 (D.D.C. 2014) (stating the government bears the

"burden of establishing a substantial probability of prejudice to a compelling interest" when addressing a complete courtroom closure); *Detroit Free Press*, 303 F.3d at 707 (stating the government must provide more than an expression of concern to justify closure).

Therefore, given the record before us, we must find Williams's Sixth Amendment right to a public trial was violated. The violation of a defendant's public trial right is structural error that does not require a showing of harm. *Waller*, 467 U.S. at 49-50; *Lilly*, 365 S.W.3d at 328. We sustain Williams's second issue. For that reason also, Williams is entitled to a new trial.

CONCLUSION

We have addressed the sole issue raised that is necessary to the disposition of the appeal. *See* TEX. R. APP. P. 47. Having sustained issue two, we reverse the trial court's judgment of conviction and remand the cause for a new trial.

Irene Rios, Justice

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